

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3476 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

NAGENDRA KUMAR BRIJRAJ SINGH

Versus

HINDUSTAN SALTS LTD

Appearance:

MR GIRISH PATEL for Petitioners
NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 03/07/2000

C A V JUDGEMENT

1 In the present case, originally petitioners
No.1-Nagendrakumar Brijraj Singh, petitioner No.2-Krishan
Gopal Bharadwaj and the petitioner No.3-S.Laxmipati and
the petitioner No.4-Veerpal Singh have filed this
petition in the year 1986. However, when the matter

reached this court, the Ld.counsel for the petitioners has submitted that only the petitioner No.3, i.e. S.Laxmipati is interested in prosecuting the present petition and, therefore, this court confines the case to the petitioner No.3-S.Laxmipati only.

2. The petitioner has filed this petition under Articles 226 & 227 of the Constitution of India against the action of Hindustan Salts Ltd-the respondent-Company herein in appointing and absorbing the petitioner in the payscale of Rs.425-800 instead of 550-900/-. The petitioner prayed that the action of the respondents in appointing and absorbing the petitioner in the payscale of Rs.425-800/- be declared illegal, arbitrary, irrational and violative of Articles 14 and 16 of the Constitution of India and further prayed to direct the respondent-Company to appoint the petitioner in the payscale of Rs.550-900/- instead of Rs.425-800 with effect from the date from which the petitioner was appointed from 1.12.1985(petitioner No.3 only).

2. Relevant facts giving rise to this petition are as under:

(i) S.Laxmipati-petitioner No.3 herein is a diplomaholder in Chemical Engineering with first class and worked as Technical Apprentice in Hindustan Polymers Ltd, Visakhapatnam(A) and Coramandal Agro-Products and Oils Ltd, Chirala(AP) for 6 months each.

(ii) The petitioner has filed this petition contending interalia that the respondent-company issued an advertisement in the Hindustan Times dated 23.7.83 inviting applications for two categories of Management Trainees. The qualifications were also prescribed in the advertisement. It was also pointed out that the selected candidates would undergo two years training and during the two years they would also be given stipends. It was also mentioned that on successful completion of the training, the candidates will be absorbed in the grades of Rs.700-1300 and 550-900 respectively.

(iii) Pursuant to the aforesaid advertisement the petitioner applied for the same and he was thereafter called for interview and interviewed on 3.10.83 at Jaipur. The petitioner contended that thereafter the petitioner was issued an appointment letter appointing him as Management Trainee in the respondent-Company. The petitioner has pointed out that in pursuance to the same the respondent-company has issued the appointment letter.

The appointment order contains various terms and conditions of appointment. It says that the petitioner would be paid stipend of Rs.700/-p.m. in the first year, Rs.800/-p.m.during the second year and period of training was for two years and the petitioner was required to pass various tests and if in case of trainees not passing the test and not satisfactorily carrying out different assignments, the management may extend the training period. Clause 3 clearly provided that on satisfactory completion of training the trainees will be absorbed in the scale of Rs.550-25-750-30-900 + other allowances.

(iv) The petitioner contended that he has joined the respondent-company as Management Trainee on 1.12.1983 and started undergoing training. The petitioner was also required to enter into a service agreement and to give a surety bond to serve the respondent-organisation for a period of five years. The petitioner entered into such service agreement with the respondent-organisation.

(v) The petitioner contended that the petitioner has completed training period and the company has given absorption order on 17.12.1995. Accordingly the petitioner was appointed as Inspector in the same scale with effect from 1.12.1985.

(vi) It was further stated by the petitioner that when the petitioner was issued absorption order appointing him in the payscale of Rs.425-800/- the petitioner was surprised and approached the higher authority and complained orally about the appointment in the scale of Rs.425-800 instead of Rs.550-900/-. It was alleged by the petitioner that the petitioner was compelled to accept the same as he had no option but to accept the appointment order because if he had refused the appointment order in the scale of Rs.420-800/- he would not have been issued appointment order at all and he would be without appointment in these hard days and economic crises. It was submitted by the petitioner that it would be very difficult for him to secure job elsewhere immediately particularly because of high rate of unemployment.

(vii) It was contended that the petitioner was carrying on his duties as Inspector sincerely, honestly, diligently and to the best of his ability and there was no complaint regarding his work, performance or conduct.

(viii) It was contended by the petitioner that action of respondent-company in appointing and absorbing the petitioners in the payscale of Rs.425-800/- in place of

Rs.550-900/- is absolutely arbitrary, irrational, discriminatory, unjust and violative of Articles 14 & 16 of the Constitution of India.

(ix) It was also contended by the petitioner that the respondent-company is Government of India enterprise and the share contribution of the Government of India is 100% and all its Directors and officers are from the Government of India. The Government of India also exercises complete, extensive and all pervasive control over the functioning of the respondent-company. The respondent-company satisfies all the requirements laid down by the Supreme Court of India in International Air Port Authority and Ajay Hansa case and it is an agency or instrumentality of the State and is "State" within the meaning of Article 12 of the Constitution of India, therefore, this petition is maintainable.

4. Mr.Girish Patel, Id.counsel for the petitioners has also taken this court through the entire evidence on the record, particularly, through the correspondance ensued between the petitioner on one hand and the respondents on the other hand for substantiating his contention regarding promissory estoppel.

5. The Learned Counsel for petitioners contended that in the present case the petitioner is governed by the doctrine of "promissory estoppel" and for that purpose he has relied on the decision of the Honourable Supreme Court in the case of ASHOK KUMAR MAHESHWARI vs STATE OF U.P reported in 1998(2) SCC 502 (supra) wherein the Honourable Supreme Court in para 17 of its judgment observed as under:

"17. In Motilal Padampat Sugar Mills vs State of UP while reiterating the above principles and quoting with approval the passage of Dixon,J extracted above, it was observed as under:

'We do not think that in order to invoke the doctrine of promissory estoppel it was necessary for the promisee to show that he suffered detriment as a result of acting in reliance on the promise. But, we may make it clear that if by detriment we mean injustice to the promisee which could result if the promisor were to recede from his promise, then detriment would certainly come in as a necessary ingredient.The detriment

in such a case is not some prejudice suffered by the promisee by acting on the promise, but the prejudice which would be caused to the promisee, if the promisor was allowed to go back on the promise".

6. The learned counsel further contended that in view of the correspondance ensued between the petitioner on one hand and the respondents on the other hand, the respondents unequivocally promised that the petitioner has acted upon the said promise . It was further contended that on the basis of said promise the petitioner has changed his position and suffered detriment suffered loss in the beginning of his career and therefore his case is covered by the aforesaid judgment of the Honourable Supreme Court.

7. On behalf of respondents Shri Pranav Desai, Learned Advocate has tried to defend the case of the respondent-Company .Mr.A.K.Shukla, Senior Officer (Legal & Vigilance), Hindustan Salts Ltd filed affidavit-in-reply wherein it was stated that due to lack of financial resources and assistance from the Government of India under various projects which were planned and due to other unforeseen circumstances the aforesaid scheme could not be implemented and the respondent-company continued to incur losses and number of posts created were not filled up and had to be abolished and therefore after completion of training the extended training period of the management trainees including the petitioner was considered in such changed circumstances by the management of the respondent No.1-Company. It was further submitted that the management was left with only two alternatives with regard to the petitioners, namely either to terminate the services of the management trainees including the petitioners or to offer posts to the management trainees including the petitioners against available vacancies in the payscale of Rs.425-800/-. It was further contended that there were vacancies available for management trainees in the payscale of Rs.550-900/-. This matter was considered by the Board of Directors of the respondent No.1-Company in its meeting held on 30.9.1985 and after detailed discussions it was decided that under prevailing conditions the management trainees in Category II be absorbed in the payscale of Rs.425-800/-. Copy of the agenda item placed before the meeting of Board of Directors of respondent No.1-Company in its meeting held on 30.9.85 is annexed to the affidavit-in-reply at annexure "II.

8. The Learned Counsel appearing for the respondents has denied the allegations made by the learned counsel for the petitioner at the time of hearing of this petition and he has relied upon the affidavit-in-reply, dated 13-10-1986 filed by Mr.A.K.Shukla, Affidavit-in-sur-rejoinder, dated 21.4.1997 filed by Mr.Arvindkumar and he also made the following submissions:

- (i) That the respondent-Company is not a "State" within the meaning of Article 12 of the Constitution of India or it is not an "agency" of "instrumentality" of the Government, and therefore, the present petition against the respondent-Company is not maintainable.
- (ii) That the appointment of the petitioner is governed by terms and conditions of the contract of employment and clause 2 of the said contract (at page 19-Annexure"C") provides that "selection as a trainee does not guarantee employment in the organisation and in the said annexure "C" the respondent-Company also reserved its right and the petitioner had accepted the said contract as stated on page 22 of the petition.
- (iii) That due to financial difficulties, since no post was available in the scale of Rs.550-900/- and instead of relieving the petitioner, on humanitarian grounds, by way of fresh contract, the respondent-company employed the petitioner in the payscale of Rs.425-800/-.
- (iv) In view of the aforesaid, the petitioner has now estopped from contending that he should be appointed and be absorbed in the payscale of Rs.550-900. Since the petitioner has entered into fresh contract the original contract by consent of the petitioner does not survive.

9. Learned counsel appearing for the respondents stated that in this case the respondents have decided to absorb the petitioner in the payscale of Rs.425-800 and therefore fresh order was made to the petitioner and the petitioner has unconditionally accepted the same and in law this amounts to novatio and therefore original contract rescinded or to that extent altered by the new contract. He has relied upon Section 62 of the Indian Contract Act for this purpose which reads as under:

"62.Effect of Novation , recession and alteration
of Contract: If the parties to a contract agree
to substitute a new contract for it, or to rescind
or alter
it, the
original
contract
need not
be
performed".

According to him that there was a contract in existence,
and a new contract is substituted for it between the same
parties, the consideration mutually being the discharge
of the old contract. Novation of a contract comprises
two elements, namely, discharge of old debt or debtor and
substitution of new debt or debtor. The discharge is by
the proper law of contract. Substituted contract should
rescind or extinguish the previous contract. The terms
of two contracts are so inconsistent and they can not
stand together and therefore in that view of the matter
the petitioners can not rely upon the earlier contract
and can not file a writ petition for enforcing the said
old contract. In this behalf, the learned counsel for
the petitioner has relied on the decision of the Supreme
Court in the matter of Union of India vs Kishorilal Gupta
and others reported in 1960 SLR 493 wherein the Supreme
Court observed as under (page 513 & 514):

"The following principles relevant to the present
case emerge from the aforesaid discussion: (1)
An arbitration clause is a collateral term of a
contract as distinguished from its substantive
terms; but none the less it is an integral part
of it; (2) however comprehensive the terms of an
arbitration clause may be, the existence of a
contract is a necessary condition for its
operation; it perishes with the contract; (3) the
contract may be non est in the sense that it
never came legally into existence or it was void
ab initio; (4) though the contract is validly
executed the parties may put an end to it as if
it had never existed and substitute a new
contract for it solely governing their rights and
liabilities thereunder; (5) in the former case,
if the original contract has no legal existence,
the arbitration clause also can not operate, for
long with the original contract, it is also void;

in the latter case, as the original contract is extinguished by the substituted one, the arbitration clause of the original contract perishes with it; and (6) between the two falls many categories of disputes in connection with a contract, such as the question of repudiation, frustration, breach etc. In those cases it is the performance of the contract that has come to an end, but the contract is still in existence for certain purposes in respect of disputes arising under it or in connection with it. As the contract subsists for certain purposes, the arbitration clause operates in respect of these purposes.

We have held that the three contracts were settled and the third settlement contract was in substitution of the three contracts; and, after its execution, all the earlier contracts were extinguished and the arbitration clause contained therein also perished along with them. We have also held that the new contract was not a conditional one and after its execution the parties should work out their rights only under its terms. In this view, the judgment of the High Court is correct. This appeal fails and is dismissed with costs"

10. He has also submitted that there is no substance in the contention of the learned advocate for petitioner that the petition is governed by law of Promissory Estoppel. According to learned advocate for respondents the doctrine of promissory estoppel is based upon a promise made by a person knowing that it would have acted upon a person to whom it is given unconditionally. According to him, in this case, originally advertisement was published and petitioner applied for the same and on the said basis the petitioners were given employment, however, in view of the changed circumstances, again fresh appointment was made to the petitioner and they have accepted the same. Therefore, there is no question of petitioner claiming promissory estoppel on the old contract, discharged, rescinded, altered or new contract. The petitioners were at liberty either to accept or to leave the new contract, but after having accepted the same they can not now complain that there is promissory estoppel.

11. It was further submitted tht the respondent-Company acted in a fair and just manner and in the best interest of the petitioner and the action of the respondent company is legal and proper and is not violative of Articles 14 & 16 of the Constitution of India. It was further submitted that the respondent-company due to financial difficulties now has been under the purview of SICA Act and it is also answerable to public at large and Parliament being a Government company under the provisions of Section 617 of the Companies Act. It was further submitted that in that view of the matter the relief prayed for in para 20(A) and 20(B) of the petition can not be granted.

12. In my view the principle of promissory estoppedl as contended by the petitioner is binding on me, but however, as far as the present petition is concerned, same is not applicable in view of the facts and circumstances stated above. It may be stated that though originally petitioner had changed his position in view of the offer made by the respondent-company as stated above, but ultimately when the company has offered new contract, the petitioner had accepted the same unconditionally on his volition. Therefore, in this case, there is no detriment to the petitioner.

13. In view of these submissions of the parties, according to me the parties to a original contract could by mutual agreement enter into a new contract in substitution of old contract and thereafter the parties will be governed by new contract which will amount to novation and that the petitioner can not base his case on the old contract and claim relief in the petition based on the old contract. On this ground the petition of the petitioner is liable to be dismissed. I am of the view that the original advertisement was published and the petitioner applied for the same and on the same basis the petitioner was given employment. However, in view of the changed circumstances, offer of fresh appointment was made to the petitioner and he has accepted the same. Therefore, there is no question of petitioner claiming any relief based on the old contract as the same is discharged, rescinded and altered by new contract. The petitioner was at liberty to accept or leave the new contract, but after having accepted the same, he can not now contend that he is entitled to relief on the basis of old contract.

14. In fact, the respondents have acted very fairly. I am of the view that therefore taking into consideration the principle of novation as contained under section 62 of the Contract Act is squarely applicable as original contract between the parties has been altered by induction of new terms and conditions given under the new contract and the substitution of new contract is the essence of novation and it is the essential feature of a right under old contract and the petitioner now can not base his relief on the basis of old contract.

15. In my view, the principle of novation as contained under section 62 of the Contract Act is clearly applicable as the original contract between the petitioner and the respondent-company has been altered by introduction of terms and conditions. The new contract is inconsistent with the terms and conditions of the old contract. Substitution of new contract is the essence of novation. It is essential feature is that the right under the original contract is relinquished or replaced by the new contract and now the petitioner can not base his relief on the basis of old contract.

16. In view of my aforesaid findings, I do not decide the contention raised by the petitioner regarding promissory estoppel as well as whether the action of respondent is illegal, invalid or violative of Article 14 and 16 of the Constitution of India. In view of the above said, the submission made by the respondent-company in the affidavit-in-reply and the submission made at the time of hearing of the petition that the petitioner is not entitled to any relief on the ground that he entered into new contract is required to be accepted.

17. Rule is discharged. No order as to costs.

3.7.2000 (K.M.MEHTA,J)